Case and Comment.

NOTES OF

RECENT IMPORTANT, INTERESTING DECISIONS.

INDEX TO ANNOTATION OF THE LAWYERS' REPORTS, ANNOTATED.

LEGAL NEWS NOTES AND FACETIÆ.

VOL. 3. MARCH, 1897. NO. 10.

CASE AND COMMENT.

Monthly. Subscription, 50 cents per annum postpaid. Single numbers, 5 cents.

THE LAWYERS' CO-OPERATIVE PUB. CO.,
Rochester, N. Y.

Branch Offices: { New York, 177 Broadway. Chicago, Rand-McNally Bldg. Boston, 10 Tremont Street.

Entered at postoffice at Rochester, N. Y., as second-class mail matter.

Seymour D. Thompson.

The conquest of difficulties by which Seymour Dwight Thompson has won his large place among masters of the law entitles him to say with Edmund Burke, "I was not . . . swaddled, and rocked, and dandled into [it]; *nitor in adversum* is the motto for a man like me." Thrown upon his own resources by his father's death, while a boy in Will county, Illinois, where he was born September 18, 1842, he worked for farmers in summer and went to school in winter, until, at sixteen, he had begun to be alternately a country "school master" and a student in Rock River and Clark seminaries preparing for college. But the war broke out and at the first call for troops he enlisted in the Iowa regiment. At the close of the war the young student had become a captain, and had been for one year a judge advocate. A legal education now became his dominating ambition, which all the combinations of unfriendly circumstances could not thwart. He held to his purpose, and even advanced toward its accomplishment, through the hardships of a variety of temporary occupations. On the streets of Memphis for a time as a patrolman of the metropolitan police force he was also a student of the law. A little later employed in the office of the clerk of the law court of Memphis, he had a more favorable opportunity for his studies. In 1869 he was admitted to the bar at Memphis.

Three years of the struggle and perseverance familiar to young lawyers were spent in Memphis, then he went to the larger strife of St. Louis. Judge Dillon, then on the bench of the United States circuit court, soon appointed him master in chancery and referred to him some important cases, thus materially aiding to establish him in his new field. He was elected judge of the St. Louis court of appeals in 1880 as the candidate of the Republican party, although the district was strongly Democratic. Twelve years were spent in distinguished service on the bench. For several years following he was too completely absorbed in legal works for publication to have any time for law practice. But at the beginning of 1896 he returned to practice and formed a partnership with Hon. Nathan Frank, of St. Louis.

The legal writings of Judge Thompson have carried his name wherever our law is studied. The first of them was the compilation of "Thompson & Steger's Tennessee Statutes;" the next was a volume of "Unreported Tennessee Cases," but this he suppressed because of printer's errors. The volume of "Cases on Self-Defense," bearing the joint names of "Horrigan & Thompson," was almost entirely the work of Mr. Thompson. Afterwards came his well-known works on "Homestead and Exemptions," "Liability of Stockholders in Corporations," "The Law of Negligence," "The Law of Carriers of Passengers," "Liability of Officers and Directors of Corporations," "Charging the Jury," "Thompson & Merriam on Juries," "Thompson on Trials," "Thompson

on the Law of Electricity," and, chief of all, the six volumes of his masterly and monumental "Commentaries on the Law of Corporations."

As editor of legal journals also Judge Thompson has long exercised a continuous and virile influence upon legal thought. First an assistant, he became the successor of Judge Dillon as editor of the "Central Law Journal." He was also editor of the "Southern Law Review" for a time, and when that was merged in the "American Law Review" he became editor of the latter, and has so continued until the present time. He has made also many contributions to other publications. In 1864 he published a history of the Third Iowa Regiment. He has also lectured on the law of corporations in the Law School of the University of Missouri, and in that of the Northwestern University of Chicago. The degree of LL.D. was conferred upon him in 1882 by the University of Missouri.

He was married in 1865 to Lucy A. Jennison, of Fort Atkinson, Iowa. They have had seven children, five of whom are living. To her he says by an inscription at the beginning of his great work on Corporations: "I can trace on almost every page of my works on the law the record of your intelligent, patient, and loving assistance."

This, in bare outline, is a retrospect of a life yet in its prime, which is remarkable for great legal learning, breadth of view, grasp of principles, and vigorous, aggressive, fearless personality.

Remedy against Stockholders of Foreign Corporations.

Much uncertainty exists respecting the right to enforce the liability of stockholders in foreign corporations when they are not found in the state of incorporation. The rule that the liability is to be determined by the law under which the corporation exists is a general one, but subject to the exception in Massachusetts that an implied liability of a shareholder to pay his subscription will not be recognized in that state, although it may exist in the state of incorporation, thus refusing to construe the contract according to the law of the place with reference to which it was made. Another well-established rule is that when any remedy can be had against stockholders of a foreign corporation its form must be governed by the law of the forum. But the question of chief difficulty is whether or not the courts will recognize and enforce *any* remedy against resident stockholders in foreign corporations.

Two kinds of stockholder's liability must be distinguished. One is the contractual liability to pay an unpaid balance on a stock subscription, the other is the statutory liability of a stockholder to creditors of the corporation which may exist after his stock is fully paid for. Although the obligation to pay for stock subscribed for is of the class of contractual liabilities which courts everywhere usually recognize, the right to enforce it in the state courts is by no means settled. A creditor's bill by a judgment creditor of a corporation is sustained in some states, but a domestic judgment and unsatisfied execution thereon are usually regarded as a necessary condition precedent. This is held to be so in the Massachusetts case of E. Remington & Sons *v.* Samana Bay Co., 140 Mass. 494, even if it is impossible to obtain such judgment. Going beyond this, the Illinois case of Young *v.* Farwell, 139 Ill. 326, denies such remedy, even after the creditor has obtained a domestic judgment against the corporation, on the ground that he must first have an adjudication of the relations of creditors, corporation, and stockholders in the state of incorporation. In many states the question has not been passed upon.

The question of most difficulty is that of a remedy to enforce the statutory liability of stockholders in foreign corporations. This liability is almost universally conceded to be contractual rather than penal, and it may probably be said that most of the decisions sustain the right to enforce such liability created by the laws of another state, if it is created in general terms without being limited by any specific provisions as to a particular remedy. A late Massachusetts case, Hancock Nat. Bank *v.* Ellis, 166 Mass. 414, is substantially to this effect and therefore changes what Judge Thompson has criticised as the "narrow and tribal policy" of earlier Massachusetts decisions. Decisions in Missouri, Connecticut, Oregon, Tennessee, Florida, New York, and South Carolina have been to similar effect, but the latest New York case on the subject declares that such a liability belongs to a class of obligations which the court is not required by comity to enforce. Marshall *v.* Sherman, 148 N. Y. 9, 34 L. R. A. 757. A particular ground of the decision, however, was the existence of a particular remedy in the state of incorporation, which was Kansas. Some of the language of the opinion in this case is broad enough to overrule the doctrine of ear-

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PORTRAIT SUPPLEMENT.—"CASE AND COMMENT."
THE LAWYERS CO-OPERATIVE PUBLISHING CO.,
ROCHESTER, N. Y.
NEW YORK: 177 BROADWAY
BOSTON: 10 TREMONT ST.
CHICAGO: RAND-McNALLY BLDG.

lier New York decisions, and to imply that the court would refuse to enforce such a liability under the statutes of another state in any form. The case of Tuttle *v.* National Bank of the Republic, 161 Ill. 497, 34 L. R. A. 750, is almost identical with Marshall *v.* Sherman, *supra*, but is more strictly based on the existence of a special remedy in Kansas. In the Federal courts such a liability has been enforced in numerous cases. In them and in most state courts the question of practical difficulty is to determine whether or not the liability created by the statute of another state is such as can be enforced by a transitory action in the nature of a common-law action, or whether it is limited by prescribing a particular remedy. In direct conflict with the New York and Illinois cases referred to, the Federal circuit court of appeals, in Rhodes *v.* United States Nat. Bank (C. C. App. 7th C.) 34 L. R. A. 742, holds that the liability under the Kansas statute is of the class that can be enforced in other states.

The numerous decisions on the subject are compared in detail in a note to Marshall *v.* Sherman, and other cases above referred to. They justify the conclusions above expressed, but show that the subject is a difficult one on which the courts are by no means agreed. Much more harmony exists in the Federal decisions than among those of the state courts. The most obvious inference to be drawn from them all is that when a plaintiff in such an action can bring his case in a Federal court he is much more likely to be successful than if he brings it in a state court.

Ulterior Purposes in a Constitution.

A covert intent does not add to the dignity of a state Constitution. Constitutional construction does not usually proceed on the theory of an ulterior purpose. Yet it does so, for once at least, in the recent Mississippi case of Ratliff *v.* Beale, 20 So. 865, 34 L. R. A. 472. A constitutional provision imposing a poll tax is held to be best effectuated by nonpayment of the tax. Its intent is declared to be, not to raise revenue, but to make nonpayment of the tax effectual to exclude negroes from voting. So the collection of the tax out of exempt or nontaxable property is denied.

The court, with all the frankness which the Constitution lacks, says: "Within the field of permissible action under the limitations of the Federal Constitution the [constitutional] convention swept the circle of expedients to obstruct the exercise of the franchise for the negro race." Not only by the poll-tax clause, but also by the disqualification for crime, does the same covert purpose appear. The list of crimes which disqualify for voting include such furtive offenses as burglary, theft, arson, and obtaining money under false pretences, which are regarded as more characteristic of negro criminals, but does not include robbery, murder, and other "robust crimes" which are practised chiefly by white men. "Restrained by the Federal Constitution from discriminating against the negro race," says the court, "the convention discriminated against its characteristics and the offenses to which its weaker members are prone."

This interpretation of the Mississippi Constitution is in accordance with its evident aim. The anomaly is not in the rules of interpretation which the court has followed to reach the constitutional intent, but in the fact that this intent is disguised.

The frank and bold utterance of the court in this case, and its evident disregard of any political or other extra-judicial considerations, recall several other constitutional cases in this court growing out of the negro problem of sixty years ago. The court decided in Green *v.* Robinson, 5 How. (Miss.) 80, and Glidewell *v.* Hite, 5 How. (Miss.) 110, that the Constitution of 1832, declaring that the importation of slaves "shall be prohibited" after May 1, 1833, was self-executing and needed no aid of legislation. The Supreme Court of the United States decided to the contrary, in cases which still stand as an unpleasant obstruction against the whole current of authorities respecting the effect of a prohibitory clause in the Constitution. But the Mississippi court, in the later case of Brien *v.* Williamson, 7 How. (Miss.) 14, stood by the correct doctrine of its own decisions, and refused to follow the surprising decision of the Federal court. The lapse of a half century and more seems to have left the judicial temper of the court unchanged.

Some interesting queries are suggested as to the conformity of the present Mississippi Constitution to the Constitution of the United States. Discrimination against negroes in respect to voting, if avowed or direct, would be plainly condemned by the Federal Constitution, but the fact that such discrimination is aimed at by indirect means is so perfectly apparent that it is explicitly declared by the court. Is an evident attempt to evade the Federal Constitution lawful because it is indirect?

Disguised discrimination against the Chinese under an ordinance was held unconstitutional by the Supreme Court of the United States in Yick Wo *v.* Hopkins, 118 U. S. 356, 30 L. ed. 220, saying: "No reason for it exists except hostility to the race. . . The discrimination is therefore illegal." But there the ordinance gave a discretion as to granting permits for laundry business which was arbitrarily exercised against the Chinese. In the present case no such arbitrary element exists. The conditions of suffrage are alike for all persons, without any discrimination against negroes. Even if their supposed shiftlessness and proneness to certain crimes influenced the choice of the conditions of suffrage, they are not denied the equal privileges or immunities of citizenship by requiring them and all other citizens to pay the same poll tax and refrain from the same crimes. The wisdom or public policy of those conditions is distinct from their constitutionality. A system which regards murder as more trivial than chicken stealing may not be approved everywhere, but it does not necessarily violate the Federal Constitution.

Index to Notes

IN

LAWYERS' REPORTS, ANNOTATED.

Book 34, Parts 2 and 3.

Mentioning only complete notes therein contained, without including mere reference notes to earlier annotations.

Among the New Decisions.

Blasting.

Failure to give warning of an intended blast in an excavation where blasting has been going on for several weeks is held, in Mitchell *v.* Prange (Mich.) 34 L. R. A. 182, to be insufficient to render the person discharging the blast liable for an injury to a blacksmith caused by the starting of a horse which he was shoeing at a place several hundred feet distant from the excavation.

Buildings.

A covenant that the "house" on a lot conveyed shall be forever restricted from having any building or part of a building attached "to the said messuage thereon erected" more than 10 feet high, is held, in Landell *v.* Hamilton (Pa.) 34 L. R. A. 227, to be not limited to the house or building then existing on the land; and a change in the use of the premises from residence to business purposes after the covenant is made does not destroy its effect.

Conflict of Laws.

The Mississippi Constitution, which precludes the defense to an action for an employee's injury that he knew of the defective or unsafe character of the machinery or appliances by which he was injured, is enforced by the Federal court in Tennessee in the case of Illinois Cent. R. Co. *v.* Ihlenberg (C. C. App. 6th C.) 34 L. R. A. 393, when the injury was received in Mississippi, since the provision is simply a variation from, and not repugnant to, the law of Tennessee.

Contracts.

A sufficient consideration for the promise by the father to the mother of a bastard child to make a conveyance of real estate to her is held, in Van Epps *v.* Redfield (Conn.) 34 L. R. A. 360, to be created by her relinquishment of the right to compel him by legal proceedings to assist in the maintenance of the child, and her support and education of the child at her own expense.

Taking stock in or helping to organize or manage a corporation formed to carry on a business after one has agreed on the sale of such a business not to continue it in that locality is held, in Kramer *v.* Old (N. C.) 34 L. R. A. 389, to constitute a breach of the contract.

Damages.

An instruction that plaintiff is "entitled" to exemplary or punitory damages if the injury for which the action was brought was malicious is held, in Robinson *v.* Superior Rapid Transit R. Co. (Wis.) 34 L. R. A. 205, to be erroneous on the ground that such damages cannot be claimed as matter of law, but only in the discretion of the jury.

The damages for the death of a married woman, in an action brought by her husband under the Tennessee statutes, are held, in Chattanooga Elec. R. Co. *v.* Johnson (Tenn.) 34 L. R. A. 442, not to include the loss to her minor child, as the statute, which provides that a right of action for injuries causing death shall not abate by reason of the death, but shall pass to widow, children, or personal representatives, fails to make any express provisions as to the beneficiary in case of the death of a married woman, but leaves the recovery to go to the husband *jure mariti* as it would have gone at common law but for the rule of abatement.

Dams.

A dam authorized by statute to raise water in a river for a public canal, and, if necessary

to use private property, to acquire such right of way therefor in the manner provided by law, is held, in Leitzsey v. Columbia Water Power Co. (S. C.) 34 L. R. A. 215, not to constitute a nuisance; but the settlement of damages for flooding lands is to be made under the eminent domain law.

The grant of a right to flood a part of a farm by the erection of a dam is held, in Nunamaker v. Columbia Water Power Co. (S. C.) 34 L. R. A. 222, to preclude the maintenance of an action for injuries, caused by the dam, to the remaining portion, since the injury, if the grantor did not get adequate compensation, is *damnum absque injuria*.

Dedication.

The power of the legislature to destroy the trust or divert the property to another purpose inconsistent with the particular use to which land is dedicated is denied in St. Paul v. Chicago, M. & St. P. R. Co. (Minn.) 34 L. R. A. 184; but the grant of the right to occupy a part of a public levee by a warehouse is held to depend on the use or purposes of that structure, and whether it was in aid of the use for which the land was dedicated. To give a public levee, or any part of it, to a railway company as a permanent site for a general freight warehouse, without reference to its traffic with craft navigating the contiguous waters, is declared to be an unlawful diversion of the property.

Eminent Domain.

A railroad charter to extend from a certain town past a sawmill, through rough, mountainous, timbered, and sparsely settled country, to the middle of a certain section of lands of the United States, without going near any other town, city, or settlement or other railroad, but which has been built only from the sawmill, about 2 miles from the town, for 5¼ miles into the timbered region, and has no freight or passenger depots, passenger coaches, or other cars except trucks, and has never charged passengers any fare,—is held, in Bridal Veil Lumbering Co. v. Johnson (Or.) 34 L. R. A. 368, to be a public way for which eminent domain may be exercised, where it is not shown that it was intended simply as a logging road, but everyone having occasion to use it as a passenger or for the transportation of freight has a right to require the service.

Payment into court of an award of viewers from which an appeal is taken by the property owners is held, in Harrisburg, C. & C. T. R. Co. v. Harrisburg & M. E. R. Co. (Pa.) 34 L. R. A. 439, to be insufficient to satisfy a constitutional provision for just compensation to be "paid or secured before the taking, injury, or destruction" of property in eminent domain cases.

Evidence.

The measurement in the presence of the jury of a woman's foot and her leg 6 inches above the ankle, in a suit for injuries to the foot and ankle, is held, in Hall v. Manson (Iowa) 34 L. R. A. 207, to be a right which the court must allow, when there is a direct conflict as to such measurement by the medical men called by the respective parties,—at least if the witness herself does not object.

Explosions.

No time for repairs after knowledge of the unsafe condition of a locomotive boiler is allowed in Louisville, N. A. & C. R. Co. v. Lynch (Ind.) 34 L. R. A. 293, in order to excuse a railroad company for injury to a person near the railroad, caused by the explosion of the boiler, if the explosion could have been avoided by discontinuing the use of the locomotive.

Food.

The tuberculin test of the animals from which milk is obtained is held, in State v. Nelson (Minn.) 34 L. R. A. 318, not to be unreasonable; and an ordinance requiring such test as a condition of a license to sell milk within the city is sustained.

Fraudulent Conveyances.

The right to transfer property in payment of a debt when the debtor is solvent is held, in Third Nat. Bank v. Divine Grocery Co. (Tenn.) 34 L. R. A. 445, to be within the constitutional protection of property rights; and therefore a Tennessee statute declaring that every transfer of property to preferred creditors, or which "would have that effect," shall be void, without limiting it to cases of insolvency, is held unconstitutional.

Garbage.

An ordinance prohibiting the collection or transportation of garbage without a license is sustained in State *v.* Orr (Conn.) 34 L. R. A. 279, as an exercise of the police power; and a provision against the transportation of "such refuse matter as accumulates in the preparation of food for the table" is construed to apply only to that which is abandoned as worthless, and, so long as they can be properly utilized for other purposes and do not constitute a nuisance, they are said to be property which may be sold or otherwise disposed of at the will of the owner.

Goodwill.

The right to the goodwill of a partnership is held, in Philbrook *v.* Newman (Cal.) 34 L. R. A. 265, to belong to the surviving partners upon their purchase of the interest of the deceased under a provision of the articles of association giving them such right, with the privilege of continuing the business under the firm name.

Husband and Wife.

A complaint by the guardian of an insane man to obtain a divorce for the latter is held, in Mohler *v.* Shank (Iowa) 34 L. R. A. 161, to be insufficient to give the court jurisdiction, although the wife is properly served and appears to contest the jurisdiction.

A contract by a married woman to pay for the support of her insane husband in an asylum, when not made in the mode provided by statute for married women's contracts, is held, in McAnally *v.* Alabama Insane Hospital (Ala.) 34 L. R. A. 223, to be invalid under a statute giving her capacity to contract as if sole "with the assent or concurrence of her husband expressed in writing," and also providing that she may engage in trade or business without his consent if he is of unsound mind.

Incompetent Persons.

The mental incompetency of an accommodation indorser at the time of signing a note in renewal of one which he indorsed when fully competent to do so is held, in Memphis Nat. Bank *v.* Neely (Tenn.) 34 L. R. A. 274, to be insufficient to prevent his estate from being liable on the renewal note, when the holder took it in good faith and thereupon extinguished and surrendered the old note, so that he cannot be restored to his original position.

The lunacy of a man, which begins after he has placed his daughter and her husband in possession of land, stating that they are to hold it during his life, and telling them of the fact that he has devised it to her, is held, in Potter *v.* Barry (N. J.) 34 L. R. A. 297, to be insufficient to defeat the right of the daughter to continue in the possession of the premises, although the lunatic's guardian notifies her and her husband to surrender them; but their possession will be protected in a court of equity so as to give effect to the purpose of the father as expressed during his sanity.

Indictment.

An indictment for the crime of offering a bribe to a juror is held insufficient, in State *v.* Howard (Minn.) 34 L. R. A. 178, because it failed to aver explicitly the knowledge of the accused that the person bribed was a juror, or to allege anything to show that the money offered was of value, but merely alleged that he offered "a bribe and money of value."

Injunction.

An injunction restraining the prosecution of several actions for the recovery of instalments on a contract, commenced by the assignee of the other party in a foreign state, was sustained in Sandage *v.* Studebaker Bros. Mfg. Co. (Ind.) 34 L. R. A. 363, where they were brought for the purpose of avoiding a statute of the state in which the contract was made and to be performed and in which the parties and such assignee reside.

Insolvency.

The proving of firm debts against a single insolvent partner is allowed in Clark *v.* Stanwood (Mass.) 34 L. R. A. 378, although the partnership is not insolvent or any proceedings taken against it.

Insurance.

The right of a wife to assign a policy of insurance on the life of her husband, under the New York statute, when the policy is issued for her benefit and the husband gives his written consent, is sustained in Spencer *v.* Myers (N. Y.) 34 L. R. A. 175, although the policy

was issued by a foreign company in another state.

The intentional killing by a third person of an insured person without the latter's connivance or foreknowledge is held, in American Accident Co. v. Carson (Ky.) 34 L. R. A. 301, to be an accident within the meaning of an accident insurance policy.

The beneficiary of a certificate of insurance on the life of her father, who is insane or incapable of attending to business, is held, in Buchannan v. Supreme Conclave I. O. of H. (Pa.) 34 L. R. A. 436, to be entitled to notice of his default in paying assessments before a forfeiture can be declared therefor after she had given the company notice of his condition and requested a notice of any default on his part so that she might make an effort to pay the assessment if he did not.

Justice of the Peace.

An action for damages alleged to have been occasioned by the negligence of a railway company in setting fire to and burning fences and causing damages to pasture land and to a crop of unmatured cotton, was held, in Bagley v. Columbus Southern R. Co. (Ga.) 34 L. R. A. 286, to be outside of the jurisdiction of a justice's court because it is an action for damages to realty.

Limitation of Actions.

A statute excluding nonresidents of the state from the benefit of a statute of limitations when the cause of action arose in the state and the defendant subsequently ceased to be a resident thereof is held, in Bates v. Cullum (Pa.) 34 L. R. A. 440, to be valid even as applied to a pre-existing obligation against which the bar of the statute had previously become complete. This is directly in conflict with the decision in Normal School Dist. v. Blodgett (Ill.) 31 L. R. A. 70, which decides that a perfected defense under the statute of limitations is properly within the protection of the constitutional guaranty as to due process of law.

Money.

The generic term "money" is held, in Hendry v. Benlisa (Fla.) 34 L. R. A. 283, to cover everything that by common consent represents property and passes as money in current business transactions. Therefore the payment of a debt or judgment during the late civil war in Confederate money, if accepted, is regarded as a full settlement providing the payment was made to one who had authority to receive it.

Mortgage.

The payment of a judgment against a railroad company for damages, after its affirmance on appeal, by the surety on a supersedeas bond who signed it when there was a mortgage in existence on which no default had been made and when the railroad company was apparently solvent, is held, in Whitely v. Central Trust Co. (C. C. App. 6th C.) 34 L. R. A. 303, to give him no preference over the mortgage, although the bond may have benefited the mortgagees by preventing a levy on the railroad, which might have been detrimental to them.

A stipulation in a mortgage that the mortgagor shall pay within the time prescribed by law all taxes upon the premises is held, in Fuller v. Kane (Mich.) 34 L. R. A. 308, insufficient to make the mortgagor liable for all taxes in case of the subsequent passage of a law requiring the mortgagee to pay those which are properly leviable against his interest.

Municipal Corporations.

Land within the limits of a town, although never divided into building lots, is held, in Briggs v. Russellville (Ky.) 34 L. R. A. 193, to be subject to municipal taxation when it is near railroad depots and shops, has convenient access to the highways, and enjoys the police protection and other benefits of the town, the business portion of which is only a short distance from the land.

The power to designate the local authority who shall appoint local officers, given to the legislature by the New York Constitution when their election or appointment is not otherwise provided for by the Constitution, is held, in Rathbone v. Wirth (N. Y.) 34 L. R. A. 408, not to justify a statute providing that the police board of the city of Albany shall consist of four commissioners, of whom two shall belong to the political party having the highest representation in the common council, and the other two to the party having the next highest representation therein, and that each member of the council shall be entitled to vote for only two of such officers. The minority which is thus given power to appoint two of the commissioners is held not to constitute

city authority within the meaning of the Constitution.

Pardon.

A legislative pardon is held void in Singleton *v.* State (Fla.) 34 L. R. A. 251, under a constitutional provision giving the pardoning power to the governor and certain other officials, subject to such regulations as may be prescribed by law relative to the manner of applying for pardons.

Religious Societies.

A majority of the members of an absolutely independent congregation are held, in Long *v.* Harvey (Pa.) 34 L. R. A. 169, to have no authority to remove officers whose terms are indefinite except by acting in compliance with the rules and discipline of the church.

Statutes.

A mere concurrent resolution of the legislature to which the executive approval is not affixed as in case of a statute, although it is passed upon the governor's recommendation to ratify his appointment of an agent for the state, and expressly directs him to allow a certain compensation, is held, in Mullan *v.* State (Cal.) 34 L. R. A. 262, not to constitute an "express authority of law" within the meaning of a constitutional provision requiring such authority as the basis for a claim against the state, and also providing that "no law shall be passed except by bill."

Street Railways.

A person riding between the rails of an electric street railway upon a bicycle is held, in Everett *v.* Los Angeles Consol. Elec. R. Co. (Cal.) 34 L. R. A. 350, to be chargeable with the duty of looking out for and endeavoring to avoid danger from the electric cars; and the motorman seeing him is held entitled to assume up to the last moment that the rider will turn out of the way by increasing his speed or turning aside to avoid the danger.

Subways.

A municipal grant to a corporation of the right to lay subways for electric wires under all the city streets, without reserving the power of supervision and control, not only of the work of excavating in the streets, but of all matters incident to its location, construction, maintenance, and use, is held, in State, *ex rel.* St. Louis Underground Service Co., *v.* Murphy (Mo.) 34 L. R. A. 369, to be beyond the power of the city, although the sole purpose of the subway may be that of leasing to public wire-using corporations.

Taxes.

Bonds of a foreign corporation, as well as bonds and certificates of stock of domestic corporations, when deposited within a safety vault within a state, although owned by a nonresident, are held, in *Re* Whiting's Estate (N. Y.) 34 L. R. A. 232, to be "property within the state," within the meaning of the New York transfer tax act.

Money of a nonresident deposited by him in a bank in the state, although mingled in a trust fund in an account opened by him as trustee, is held, in *Re* Houdayer's Estate (N. Y.) 34 L. R. A. 235, to constitute "property within the state" within the meaning of the New York transfer tax act, which includes property of a nonresident decedent if within the state.

Bonds of a domestic corporation, which are in another state in possession of a nonresident owner, are held, on the other hand, in *Re* Bronson's Estate (N. Y.) 34 L. R. A. 238, not to constitute "property within the state," within the meaning of the New York transfer tax act; but shares of capital stock of a domestic corporation, although the certificates are in another state, in possession of a nonresident owner, are held to constitute "property within the state."

The intent of dealers in cattle to export part of them, and the fact that they do export about two thirds of all which they handle, are held, in Myers *v.* Baltimore County Comrs. (Md.) 34 L. R. A. 309, insufficient to prevent the taxation of the cattle to the average amount that the dealers have on hand.

Telegraphs.

A rule of a telegraph company not to deliver messages outside of a ½-mile limit is held, in Western Union Teleg. Co. *v.* Robinson (Tenn.) 34 L. R. A. 431, insufficient to excuse a delay in delivering a message sent to a small town a few miles away, summoning a minister of the gospel to a person near death, when the rule was not known to the sender and was not mentioned by the agent, who received the message about dark, stating that it could be delivered that night.

Voters and Elections.

Two thirds of the voters voting at an election to be held for the purpose of issuing bonds are held, in Belknap *v.* Louisville (Ky.) 34 L. R. A. 256, to mean two thirds of all the votes cast for any purpose at that election, although this was one of the questions voted upon at a general election.

An assemblage of twenty-one persons representing only one fourth of the precincts of a single county, who met without any call for a convention, or any notices except by word of mouth, or any election as delegates, or any credentials, and immediately assumed to form a new party and organize themselves into a county convention, was denied recognition in State, *ex rel.* Metcalf, *v.* Johnson (Mont.) 34 L. R. A. 313, either as a state convention or as a county convention whose nominees could be allowed to appear on the official ballot.

Nominations by a self-constituted county committee of an alleged party are held, in State, *ex rel.* Russell, *v.* Tooker (Mont.) 34 L. R. A. 315, not to be entitled to appear on an official ticket when the power has not been delegated to such committee by any convention of the party. The same case refuses to recognize a nomination by a political club.

Wills.

The common-law rule that the will of a man is not revoked by his subsequent marriage alone, without the birth of issue, is held, in *Re* Hulett's Estate (Minn.) 34 L. R. A. 384, to be still in force, notwithstanding a statute giving a wife a right to inherit from her husband.

New Books.

"Devlin on Deeds." Bancroft-Whitney Co., San Francisco, Cal. 2d ed. 3 Vols. $16.50.

"Joyce on Insurance." Bancroft-Whitney Co., San Francisco, Cal. 4 Vols. $24.

"New Pocket Codes and Statutes of California." Bancroft-Whitney Co., San Francisco, Cal. 5 Vols. $12.50.

"Crimes and Criminal Procedure." By Lewis Hochheimer. Harold B. Scrimger, Baltimore, Md. 1 Vol. $5.50.

"The Law of Personal Injuries Relating to Master and Servant." By Wm F. Bailey. Callaghan & Co., Chicago, Ill. 2 Vols. $12.

"Mineral Land Law Digest." By Horace F. Clark, Charles C. Heltman, and Charles F. Consaul. Callaghan & Co., Chicago, Ill. 1 Vol. $7.50.

"Reynold's Theory of Evidence." Callaghan & Co., Chicago, Ill. 3d ed. 1897. Cloth, $2. Sheep, $2.50.

"Domesday Book and Beyond." By Frederick Wm. Maitland. Little, Brown & Co., Boston, Mass. Cloth, $4.50.

"Manual of Elementary Practice." By C. La Rue Munson. Bowen-Merrill Co., Indianapolis, Ind. 1 Vol. $3.

"Criminal Law." By Emlin McClain. Callaghan & Co., Chicago, Ill. 2 Vols. $12.

The Humorous Side.

EQUITY RULES FOR KICKING AND BITING.— An eminent court, recently discussing the principles and practice of a court of equity, said: "It will not kick a party out of one door and then invite him to come in at another;" and again: "It will not take two bites at a cherry."

IT WAS NOT AN ARC LIGHT.— In a late case concerning asses killed by a train going round a bend, the court says: "It was also shown that in going around a curve the light would be projected directly ahead of the engine and not on the arc of the track." Another scientific fact is now settled in that jurisdiction. Whether the failure to equip the engine with an arc light with which to go round a curve constituted negligence does not seem to have been decided.

NO PUSHING.— *À propos* of an alleged ratification after majority of a debt contracted during infancy by admitting that it was a just debt and promising to pay if the debtor ever got so that he could without inconvenience, the court in a late North Carolina case says this recalled to the minds of some members of the court a settlement of accounts which may with propriety be preserved as history in the judicial annals of the state. A debtor named Huggins, when solicited to close an old open account by note, agreed to do so provided he should be allowed to draft the instrument, and accordingly presented the creditor the following:

I, John Huggins, agree to pay James James $150.00 whenever convenient; but it is understood that Huggins is not to be pushed.

Witness my hand and seal this the — day of —.

John Huggins. [Seal.]